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SENATE BILL 2970 By
McNally

HOUSE BILL 3002
By Scroggs

AN ACT to amend Tennessee Code Annotated, Title 12; Title 56;
Title 57; Title 67 and Title 71, relative to TennCare.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 56, Chapter 32, Part 2, is amended by
adding the following as a new section:

56-32-239.

(a) In addition to any tax imposed pursuant to Section 56-32-224, there is also
imposed on each health maintenance organization doing business in this state an
assessment that shall be determined annually in accordance with the provisions of this
section.

(b) Each year after the actuarial study required by Section 71-5-188 determines
the state costs for the uninsurable portion of the TennCare expansion population, the
comptroller shall certify the growth in state costs attributable to uninsurables from the
immediately prior year to the commissioner of commerce and insurance. The
commissioner shall divide the estimate of such costs between insurance companies
subject to tax under Chapter 4 of this title and health maintenance organizations subject

to tax under this chapter. The commissioner shall develop an assessment on each health maintenance organization [HMO] doing business in this state to collect the revenue needed for the proportional share of such costs to be paid by health maintenance organizations. The assessment shall be developed in accordance with the provisions of subsection (c) of this section.

(c)

(1) Each HMO's proportion of the state cost shall be equal to that HMO's proportion of its premium and subscriber contract charges for health insurance written in the state during the preceding calendar year as compared to the total of all premiums and subscriber contract charges written in the state. Each HMO's proportion of the cost shall be determined by the commissioner based upon annual statements filed with the department of commerce and insurance, or such other reports or information deemed necessary by the commissioner.

(2) The commissioner of commerce and insurance, with the approval of the commissioner of finance and administration, may abate or defer, in whole or in part, the assessment of an HMO if, in the opinion of the commissioners of commerce and insurance and finance and administration, payment of the assessment would endanger the ability of the HMO to fulfill its contractual obligations. In the event an assessment against an HMO is abated or deferred in whole or in part, the amount by which such assessment is abated or deferred may be assessed against the other HMOs in a manner consistent with the basis for assessments set forth in this section. The HMO receiving such abatement or deferment shall remain liable to the department for deficiency for four (4) years.

(3) It is unlawful for any HMO to fail or refuse to pay an assessment or to respond to an inquiry from the commissioner regarding information necessary to make assessments within forty-five (45) days of the assessment notice or request for information.

(4) Whenever the commissioner has reason to believe that an HMO has failed or refused to pay an assessment, or has failed or refused to respond to a request for information necessary to make assessments in a timely fashion or has failed or refused to register in accordance with the provisions of this section,

the commissioner may issue and serve upon such an HMO a notice of hearing to determine whether the HMO has failed or refused to pay an assessment or respond to an inquiry or register in a timely fashion. Such hearing shall be conducted in accordance with the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5.

(5) If, after notice and hearing, the commissioner determines that the HMO has failed or refused to pay an assessment, or has failed or refused to provide information necessary to make assessments in accordance with this section, or has failed or refused to register in accordance with the provisions of this section, the commissioner may assess a civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each and every act or violation. Each day in which the HMO has failed or refused to pay an assessment or to provide information necessary to make assessments or register in accordance with this section constitutes a separate act or violation. The commissioner may, if the commissioner determines that the HMO knew or reasonably should have known that such member was in violation of this section, suspend or revoke the HMO's certificate of authority to transact business in this state.

(d) The commissioner shall establish the amount of assessment pursuant to this section, annually at the end of each calendar year, and the assessment shall be due and payable within thirty (30) days of the receipt of the assessment notice.

SECTION 2. Tennessee Code Annotated, Title 56, Chapter 4, Part 2, is amended by adding the following as a new section:

56-4-222.

(a) In addition to any tax imposed pursuant to this chapter, there is also imposed on each insurance company doing business in this state for health insurance coverage,

as such coverage is defined in Section 56-7-2802, an assessment that shall be determined annually in accordance with the provisions of this section.

(b) Each year after the actuarial study required by Section 71-5-188 determines the state costs for the uninsurable portion of the TennCare expansion population, the comptroller shall certify the growth in state costs attributable to uninsurables from the immediately prior year to the commissioner of commerce and insurance. The commissioner shall divide the estimate of such costs between insurance companies subject to tax under Chapter 4 of this title and health maintenance organizations subject to tax under this title. The commissioner shall develop an assessment on each insurance company doing business for health insurance coverage, as such coverage is defined in Section 56-7-2802, in this state to collect the revenue needed for the proportional share of such costs to be paid by such insurance companies. The assessment shall be developed in accordance with the provisions of subsection (c) of this section.

(c)

(1) Each insurance company's proportion of the state cost shall be equal to that insurance company's proportion of its premium and subscriber contract charges for health insurance written in the state during the preceding calendar year as compared to the total of all premiums and subscriber contract charges written in the state. Each insurance company's proportion of the cost shall be determined by the commissioner based upon annual statements filed with the department of commerce and insurance, or such other reports or information deemed necessary by the commissioner.

(2) The commissioner of commerce and insurance, with the approval of the commissioner of finance and administration, may abate or defer, in whole or in part, the assessment of an insurance company if, in the opinion of the

commissioners of commerce and insurance and finance and administration, payment of the assessment would endanger the ability of the insurance company to fulfill its contractual obligations. In the event an assessment against an insurance company is abated or deferred in whole or in part, the amount by which such assessment is abated or deferred may be assessed against the other insurance companies in a manner consistent with the basis for assessments set forth in this section. An insurance company receiving such abatement or deferment shall remain liable to the department for deficiency for four (4) years.

(3) It is unlawful for any insurance company to fail or refuse to pay an assessment or to respond to an inquiry from the commissioner regarding information necessary to make assessments within forty-five (45) days of the assessment notice or request for information.

(4) Whenever the commissioner has reason to believe that an insurance company has failed or refused to pay an assessment, or has failed or refused to respond to a request for information necessary to make assessments in a timely fashion or has failed or refused to register in accordance with the provisions of this section, the commissioner may issue and serve upon such an insurance company a notice of hearing to determine whether the insurance company has failed or refused to pay an assessment or respond to an inquiry or register in a timely fashion. Such hearing shall be conducted in accordance with the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5.

(5) If, after notice and hearing, the commissioner determines that the insurance company has failed or refused to pay an assessment, or has failed or refused to provide information necessary to make assessments in accordance with this section, or has failed or refused to register in accordance with the provisions of this section, the commissioner may assess a civil penalty of not less

than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each and every act or violation. Each day in which the insurance company has failed or refused to pay an assessment or to provide information necessary to make assessments or register in accordance with this section constitutes a separate act or violation. The commissioner may, if the commissioner determines that the insurance company knew or reasonably should have known that such member was in violation of this section, suspend or revoke the insurance company's certificate of authority to transact business in this state.

(d) The commissioner shall establish the amount of assessment pursuant to this section, annually at the end of each calendar year, and the assessment shall be due and payable within thirty (30) days of the receipt of the assessment notice.

SECTION 3. Tennessee Code Annotated, Section 71-5-188, is amended by adding the following language at the end of the section:

In addition to other information which the comptroller determines to be relevant or useful, the actuarial study shall determine state costs for the uninsurable portion of the TennCare expansion population apart from any premiums and any federal financial participation. The study shall also determine the growth in state costs attributable to uninsurables from the immediately prior year.

SECTION 4. Tennessee Code Annotated, Section 67-4-1004(a), is amended by deleting the language "six and one-half (6 ½) mills", and by substituting instead the language "nine (9) mills".

Tennessee Code Annotated, Section 67-4-1004, is further amended by adding the following new subsections:

(c) Notwithstanding any provision of this section or any other law to the contrary, any revenue generated from the increase in tax rate from six and one-half (6 ½) mills to nine (9) mills shall be allocated to the TennCare program.

(d) Any wholesale dealers, jobbers, tobacco distributors, and retail dealers having cigarette tax stamps, affixed and unaffixed, in their possession on July 31, 2002, shall not be required to pay the additional cigarette tax on such stamps resulting from the increase in tax rate from six and one-half (6 ½) mills to nine (9) mills.

SECTION 5. Tennessee Code Annotated, Section 57-3-302(a), is amended by designating the existing language as subdivision (1), by deleting the language "one dollar and ten cents (\$1.10)", and by substituting instead the language "one dollar and thirty-seven and one-half cents (\$1.375)".

Tennessee Code Annotated, Section 57-3-302(a), is further amended by adding the following new subdivision:

(2) Notwithstanding any provision of this subsection or any other law to the contrary, any revenue generated from the increase in tax rate from one dollar and ten cents (\$1.10) to one dollar and thirty-seven and one-half cents (\$1.375) shall be allocated to the TennCare program.

SECTION 6. Tennessee Code Annotated, Section 57-3-302(b), is amended by designating the existing language as subdivision (1), by deleting the language "four dollars (\$4.00)", and by substituting instead the language "five dollars (\$5.00)".

Tennessee Code Annotated, Section 57-3-302(b), is further amended by adding the following new subdivision:

(2) Notwithstanding any provision of this subsection or any other law to the contrary, any revenue generated from the increase in tax rate from four dollars (\$4.00) to five dollars (\$5.00) shall be allocated to the TennCare program.

SECTION 7. Tennessee Code Annotated, Section 57-4-301(c), is amended by deleting the language "fifteen percent (15%)" and by substituting instead the language "seventeen percent (17%)".

Tennessee Code Annotated, Section 57-4-301(c), is further amended by adding the following language at the end of the subsection:

Notwithstanding any provision of this subsection or any other law to the contrary, any revenue generated from the increase in tax rate from fifteen percent (15%) to seventeen percent (17%) shall be allocated to the TennCare program.

SECTION 8. Tennessee Code Annotated, Section 57-5-201(a)(1), is amended by deleting the language "three dollars and ninety cents (\$3.90)," and by substituting instead the language "four dollars and twenty-nine cents (\$4.29)".

Tennessee Code Annotated, Section 57-5-201(a), is further amended by adding the following new subdivision:

(3) Notwithstanding any provision of this subsection or any other law to the contrary, any revenue generated from the increase in tax rate from three dollars and ninety cents (\$3.90) to four dollars and twenty-nine cents (\$4.29) shall be allocated to the TennCare program.

SECTION 9. Tennessee Code Annotated, Section 57-6-104(c)(5), is amended by inserting the language "or the state privilege tax levied in Tennessee Code Annotated, Section 57-5-201" immediately following the words "excise tax" in the first sentence.

SECTION 10. Tennessee Code Annotated, Section 67-4-410(b), is amended by deleting the language "fifteen percent (15%)" and by substituting instead the language "seventeen percent (17%)".

Tennessee Code Annotated, Section 67-4-410(b), is further amended by adding the following language at the end of the subsection:

Notwithstanding any provision of this subsection or any other law to the contrary, any revenue generated from the increase in tax rate from fifteen

percent (15%) to seventeen percent (17%) shall be allocated to the TennCare program.

SECTION 11. Tennessee Code Annotated, Title 71, Chapter 5, Part 1, is amended by adding the following as a new section:

71-5-192.

(a)

(1) A person described in subdivision (2) shall not, other than as provided by law, knowingly disclose contractor bid or proposal information or source selection information before the award of a TennCare or medical assistance-related contract to which the information relates.

(2) Subdivision (1) applies to any person who:

(A) is a present or former official of the state of Tennessee, a state employee, an independent contractor, a subcontractor or a person who is acting or has acted for or on behalf of, or who is advising or has advised the state of Tennessee with respect to, a TennCare or medical assistance-related contract; and

(B) by virtue of that office, employment, or relationship has or had access to contractor bid or proposal information or source selection information.

(b)

(1) It is an offense to engage in conduct constituting a violation of subsection (a) for the purpose of:

(A) exchanging the information covered by such subsection for anything of value; or

(B) obtaining or giving anyone a competitive advantage in the award of a state medical assistance agency procurement contract.

(2) A violation of subdivision (1) is a Class C felony.

(3) The attorney general and reporter may bring a civil action in an appropriate court with jurisdiction against any person who engages in conduct constituting a violation of subsection (a). Upon proof of such conduct by a preponderance of the evidence, the person is subject to a civil penalty. An individual who engages in such conduct is subject to a civil penalty of not more than fifty thousand dollars (\$50,000) for each violation plus twice the amount of compensation which the individual received or offered for the prohibited conduct. An organization that engages in such conduct is subject to a civil penalty of not more than five hundred thousand dollars (\$500,000) for each violation plus twice the amount of compensation which the organization received or offered for the prohibited conduct.

(4)

(A) If a state medical assistance agency receives information that a contractor or a person has engaged in conduct constituting a violation of subsection (a), the state medical assistance agency shall consider taking one or more of the following actions, as appropriate:

(i) Cancellation of the state medical assistance agency procurement, if a contract has not yet been awarded.

(ii) Rescission of a contract with respect to which:

(a) the contractor or someone acting for the contractor has been convicted for an offense punishable under subdivision (1); or

(b) the head of the agency that awarded the contract has determined, based upon a preponderance of the evidence, that the contractor or someone acting for the

contractor has engaged in conduct constituting such an offense.

(iii) Initiation of suspension or debarment proceedings for the protection of the state in accordance with procedures in, Title 12, Chapter 4, and Section 71-5-118.

(iv) Initiation of adverse personnel action, pursuant to the procedures in, Title 8, Chapter 30, Part 3, or other applicable law or regulation.

(B) If a state medical assistance agency rescinds a contract pursuant to (A)(ii), the state is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.

(C) For purposes of any suspension or debarment proceedings initiated pursuant to (A)(iii), engaging in conduct constituting an offense under subsection (a) of this section affects the present responsibility of a state contractor or subcontractor.

(c) As used in this section:

(1) "Contractor bid or proposal information" means any of the following information submitted to a state medical assistance agency as part of, or in connection with, a bid or proposal to enter into a state medical assistance agency procurement contract, if that information has not been previously made available to the public or disclosed publicly:

(A) Cost or pricing data;

(B) Indirect costs and direct labor rates;

(C) Proprietary information about processes, operations, or techniques marked by the contractor in accordance with applicable law or regulation; or

(D) Information marked by the contractor as "contractor bid or proposal information," in accordance with applicable law or regulation.

(2) "Contracting officer" means a person who, by appointment in accordance with applicable regulations, has the authority to enter into a state medical assistance agency procurement contract on behalf of the state and to make determinations and findings with respect to such a contract.

(3) "Official" means a "public officer and employee" as such term is defined in Section 2-19-201.

(4) "Protest" means a written objection by an interested party to the award or proposed award of a state medical assistance agency procurement contract.

(5) "Source selection information" means any of the following information prepared for use by a state medical assistance agency for the purpose of evaluating a bid or proposal to enter into a state medical assistance agency procurement contract, if that information has not been previously made available to the public or disclosed publicly:

(A) Bid prices submitted in response to a state medical assistance agency solicitation for sealed bids, or lists of those bid prices before public bid opening;

(B) Proposed costs or prices submitted in response to a state medical assistance agency solicitation, or lists of those proposed costs or prices;

(C) Source selection plans;

(D) Technical evaluation plans;

(E) Technical evaluations of proposals;

(F) Cost or price evaluations of proposals;

(G) Competitive range determinations that identify proposals that have a reasonable chance of being selected for award of a contract;

(H) Rankings of bids, proposals, or competitors;

(I) The reports and evaluations of source selection panels, boards, or advisory councils; or

(J) Other information marked as "source selection information" based on a case-by-case determination by the head of the agency, or such person's designee, or the contracting officer that its disclosure would jeopardize the integrity or successful completion of the state medical assistance agency procurement to which the information relates.

(6) "State medical assistance agency" means the department administering the medical assistance program pursuant to Sections 71-5-104 and 71-5-127, and any lawful executive order in effect.

(7) "State medical assistance agency procurement" means the acquisition (by using competitive procedures and awarding a contract) of goods or services from non-state sources by a state medical assistance agency using appropriated funds.

(d) No person may file a protest against the award or proposed award of a state medical assistance agency procurement contract alleging a violation of subsection (a), nor may the comptroller of the treasury consider such an allegation in deciding a protest, unless that person reported to the state medical assistance agency responsible for the procurement, no later than fourteen (14) days after the person first discovered the possible violation, the information that the person believed constitutes evidence of the offense.

(h) This section does not:

(1) restrict the disclosure of information to, or its receipt by, any person or class of persons authorized, in accordance with applicable agency regulations or procedures, to receive that information;

(2) restrict a contractor from disclosing its own bid or proposal information or the recipient from receiving that information;

(3) restrict the disclosure or receipt of information relating to a state medical assistance agency procurement after it has been canceled by the state medical assistance agency before contract award unless the state medical assistance agency plans to resume the procurement;

(4) prohibit individual meetings between a state medical assistance agency official and an offeror or potential offeror for, or a recipient of, a contract or subcontract under a state medical assistance agency procurement, provided that unauthorized disclosure or receipt of contractor bid or proposal information or source selection information does not occur;

(5) authorize the withholding of information from, nor restrict its receipt by, the general assembly, a committee or subcommittee of the general assembly, the comptroller of the treasury, or a state medical assistance agency;

(6) authorize the withholding of information from, nor restrict its receipt by, the comptroller of the treasury in the course of a protest against the award or proposed award of a state medical assistance agency procurement contract; or

(7) limit the applicability of any requirements, sanctions, contract penalties, and remedies established under any other law or regulation.

SECTION 12. Tennessee Code Annotated, Title 71, Chapter 5, Part 1, is amended by adding the following as a new section:

Section 71-5-193. Not later than October 1, 2002, the bureau of TennCare or its successor agency shall enter into an interagency agreement with a state agency to

conduct eligibility determinations on and after January 1, 2003, for medical assistance under this chapter for the expansion population of uninsured and uninsurables in the TennCare program, or its successor program, in accordance with criteria set by the bureau that comply with state and federal law.

SECTION 13. The commissioner of finance and administration is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5.

SECTION 14. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 15. This act shall take effect July 1, 2002, the public welfare requiring it, except that Section 4 of this act will take effect on August 1, 2002, and Sections 5 through 11, inclusive, will take effect on September 1, 2002, the public welfare requiring it.